IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3903 OF 2006

Steelite Engineering Ltd & Ors. ...Petitioners
v/s.
Prakash Vishnidas & Ors. ...Respondents

Shri M.J. Jamdar for the Petitioners.
Shri C.P. Deogirkar for Respondent No.1.
Shri G.V. Murthi for Respondent No.4.

CORAM : V.M. KANADE, J.

DATED : MARCH 12, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. The petitioners are challenging the order passed by the City Civil Court at Bombay in their Chamber Summons whereby the Judge, City Civil Court was pleased to reject the Chamber Summons which they had taken out for being impleaded as party defendants in the suit which is filed by the original plaintiff-respondent no.1 herein.

3. Brief facts are that the petitioners therein are the members of respondent no.4 society. It is alleged

by the plaintiff-respondent no.1 herein that the society had passed a resolution in its meeting granting development rights to him and thereafter, a development agreement was executed between society-respondent no.4 and respondent no.1. The petitioners herein challenged the said resolution by raising a dispute under Section 91 of the Co-operative Societies Act alleging therein that no such resolution was passed and that the resolution, therefore, should be set aside by the co-operative court. The said dispute is still pending.

4. During the pendency of the said dispute, respondent no.1 herein filed a suit in the City Civil Court being S.C.Suit No.5308/2003 in which he sought an order of injunction restraining the society and respondent nos.2 and 3 who are the members of the said society from obstructing the plaintiff from carrying out the development as per the agreement executed by the society. The petitioners filed a chamber summons in the said suit seeking that they should be added as party defendants.

5. The learned Counsel for the petitioners submitted that they are proper and necessary party and they have in the real sense obstructed the plaintiff from carrying out the construction if not physically but by filing a dispute in the co-operative court. He submits that therefore, the petitioners are proper and necessary party to the suit and the prayer which is made by the plaintiff in the suit is based on development rights which are given to the plaintiff by the society and also the resolution which is passed which is challenged by him in the co-operative court.

6. The learned Counsel for the plaintiff has submitted firstly, that other members of the society have filed the Chamber Summons in the City Civil Court in his suit for being added as party defendants. Their application was rejected and writ petition which is filed in this court was also rejected. It is submitted that the case.. of the petitioners was exactly identical to that of the petitioners in the said petition and therefore, that ground alone, petition liable to be dismissed. He further submitted that the

suit was filed for restricting two persons who are physically obstructing him from carrying out the development of the property. He submitted that in none of the affidavits or pleadings, the present petitioners had made any submission that they were physically obstructing the plaintiff and on that ground, the petition is liable to be dismissed.

7. The learned Counsel for the society, Shri Murthi also vehemently opposed the claim of the petitioners to be added as the defendants. He submitted that the society was being represented in the suit and the society would take care of interest of its members therefore, there was no reason for the petitioners to be added as party defendants.

8. In my view, though the present petitioners cannot be physically obstructing the plaintiffs, yet they have challenged the resolution which has been passed by the society in favour of the plaintiff, therefore, they are directly interested in the proceeding as they would be affected by the outcome. In

Writ Petition No.2476/2006 which was rejected by this Court by order dated 19.4.2006, the petitioners therein who were the members of the society had not made a categorical statement that they were obstructing the construction which was to be carried out by the plaintiff and on that ground, the petition be dismissed. The facts in the said case and in the present case are different and therefore, a distinction will have to be made in the case of the petitioners who have in fact challenged the decision of the society and the agreement executed between the plaintiff and the society in the co-operative court and therefore, ratio in the said order passed by this Court will not apply to the facts of the present case.

9. In any case, no prejudice would be caused to the plaintiff if the petitioners are added as party defendants. Apart from that the petitioners have also challenged action of the society in granting development rights. Therefore, the submission of Shri Murthi that the society would be in a position to take care of interest of the petitioners, cannot be accepted since

there is dispute between the society and the present petitioners on that issue.

10. Under these circumstances, the impugned order is set aside. Chamber Summons is allowed. The plaintiff is directed to add the petitioners as party defendants within a period of four weeks.

. Writ Petition is allowed in the above terms.

(V.M. Kanade, J.)